85-1481

No. _____

Supreme Court, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

THE STATE OF IOWA *ex rel.*
THOMAS J. MILLER,
Attorney General of Iowa,

and

DANNY GETTLER, *et al.*,

Petitioners,

vs.

JOHN BLOCK, Secretary of the
United States Department of Agriculture,
and THE UNITED STATES
DEPARTMENT OF AGRICULTURE,

Respondents.

JOINT PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1. Whether an Administrative Procedure Act action challenging the validity of a rule which purports to terminate a statutory program established by the Congress is an attempt to obtain "an attachment, injunction, garnishment, or similar process, mesne or final" against the Commodity Credit Corporation or its property in violation of 15 U.S.C. § 714b(c).

2. Whether an Administrative Procedure Act action seeking to require the Secretary of Agriculture to comply with federal law and his own rules is an attempt to obtain "an attachment, injunction, garnishment, or similar process, mesne or final" against the Commodity Credit Corporation or its property in violation of 15 U.S.C. § 714b(c).

3. Whether a state may litigate on its own behalf or as parens patriae to force a federal agency to comply with the intent of statutory provisions enacted by Congress that are beneficial to the citizens of the State.

4. Whether allegations of injury to the state fisc establish sufficient injury in fact to confer standing to challenge the failure of a federal agency to provide statutory benefits to its citizens.

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JOINT PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Petitioners, the State of Iowa ex rel. Thomas J. Miller and Danny Gettler, et al., respectfully pray that a Writ of Certiorari issue to review the judgment

and opinion of the United States Court of Appeals issued on September 21, 1985, rehearing and rehearing en banc denied on December 5, 1985.

OPINION BELOW

The opinion of the Court of Appeals is reported at 771 F.2d 347 and is presented in Petition Appendix A for the convenience of the Court. The order denying rehearing en banc, which is not reported, appears as Petition Appendix B. The unreported opinion of the District Court appears as Petition Appendix C.

JURISDICTION

The final judgment of the Court of Appeals for the Eighth Circuit was entered on December 5, 1985, after rehearing and rehearing en banc was denied. This petition is filed within

ninety days of entry of judgment. Jurisdiction is invcked pursuant to 28 U.S.C. § 1243(1).

CONSTITUTIONAL PROVISIONS

U.S. Const. art. III, § 2, cl. 1:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States,--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

STATUTES

Administrative Procedure Act

5 U.S.C. § 706(2)(a):

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

> . . .
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be--
> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
> ....

5 U.S.C. § 701(a)(2):

(a) This chapter applies, according to the provisions thereof, except to the extent that--
...

(2) agency action is committed to agency discretion by law.

Emergency Feed Program

7 U.S.C. § 2267(a):

Notwithstanding any other provision of law, the Secretary of Agriculture may implement an emergency feed program for assistance in the preservation and maintenance of livestock and poultry in any area of the United States, including Puerto Rico, Guam, and the Virgin Islands of the United States, where, because of flood, drought, fire, hurricane, earthquake, storm, or other natural disaster, the Secretary determines that an emergency exists.

Livestock Feed Program

7 U.S.C. § 1427:

The Commodity Credit Corporation may sell any farm commodity owned or controlled by it at any price not prohibited by this section. . . . The Corporation shall not sell any basic agricultural commodity or storable nonbasic commodity at less than 5 per centum above the current support price for such

commodity, plus reasonable carrying charges:

* * *

Notwithstanding the foregoing, the Corporation, on such terms and conditions as the Secretary may deem in the public interest, may make available any farm commodity or product thereof owned or controlled by it for use in relieving distress . . . in connection with any major disaster determined by the President to warrant assistance by the Federal Government under sections 1855 to 1855g of Title 42 and may make feed owned or controlled by it available at any price not less than 75 per centum of the current basic county loan rate (or a comparable price if there is no current basic county loan rate) for assistance in the preservation and maintenance of foundation herds of cattle (including producing dairy cattle), sheep, and goats, and their offspring, in any area of the United States including the Virgin Islands where, because of flood, drought, fire, hurricane, earthquake, storm, disease, insect infestation, or other catastrophe in such areas, the Secretary determines that an emergency exists which warrants such

assistance, such feed to be made available only to persons who do not have, and are unable to obtain through normal channels of trade without undue financial hardship, sufficient feed for such livestock: Provided, That the Secretary may provide for the furnishing of feed or mixed feed, in accordance with regulations prescribed by him, to such persons by feed dealers under an arrangement whereby the feed grains (or other feed being sold by the Corporation) in the feed so furnished would be replaced with feed owned or controlled by the Corporation and sold to such persons at a price determined as provided above (emphasis supplied).

* * *

Anti-Injunction Provision

15 U.S.C. § 714b(c):

The Corporation --

(c) May sue and be sued, but no attachment, injunction, or other process, mesne or final, shall be issued against the Corporation or its property.

REGULATIONS

Livestock Feed Program

7 C.F.R. § 1475.1:

The regulations in this subpart contain the terms and conditions of a Livestock Feed Program. . . .

Emergency Feed Program

7 C.F.R. § 1475.50:

The regulations in this subpart contain the terms and conditions of an emergency feed program. . . .

7 C.F.R. § 1475.53:

Benefits under the program shall be available to any owner of livestock which are maintained in the United States . . . who: (a) has suffered during the crop year a substantial loss of livestock feed normally produced on land owned (or operated under a bona fide lease) by the livestock owner, and (b) has filed an application for assistance under the Emergency Feed Program no later than April 8, 1982. . . .

STATEMENT OF THE CASE

The State of Iowa and several individual farmers seek review of the adverse portions of a decision of the United States Court of Appeals for the Eighth Circuit which held that 15 U.S.C. § 714b(c) immunized the Secretary of Agriculture and the United States Department of Agriculture from an Administrative Procedure Act (APA) challenge tc an agency rule and barred judicial review to compel the Secretary to comply with federal law and his own duly promulgated rules. The Court of Appeals also erroneously ruled that the State of Iowa lacked standing to seek judicial review of the agency's action.

A. Factual Background.

In 1983 livestock farmers in Iowa experienced the worst drought since the dust bowl. Transcript of Hearing on

Preliminary Injunction at 22-24 (hereinafter Tr.). Yields on feed grains used by livestock farmers to support their herds fell to a small fraction of established yields in normal years. Tr. 62, 126. The inability of livestock farmers to produce their own feed grains forced producers either to purchase feed grains or feed grain substitutes on the open market or to liquidate all or part of their herds. Tr. 207. Either course of action presented livestock producers with dramatic financial hardship. As a result of the drought and its consequences, "many farmers skirted the brink of financial ruin." State of Iowa ex rel. Miller v. Block, 771 F.2d 347, 348; Pet. App. 3.

B. The Congressionally Established Disaster Assistance Programs.

Congress has long recognized that farmers are at the mercy of weather conditions. In order to assist farmers facing severe economic hardship caused by unpredictable weather catastrophies such as the 1983 drought, Congress established in 1949 a Livestock Feed Program currently codified in 7 U.S.C. § 1427.

In the Food and Agriculture Act of 1977, Congress established an Emergency Feed Program, now codified at 7 U.S.C. § 2267, to provide an additional safety net for livestock producers.

Under the Emergency Feed Program, or EFP, the Secretary is authorized to provide cash assistance to livestock producers in order to preserve herds when natural disasters such as drought have created an emergency. Based on the

congressional authorization, the Secretary has promulgated extensive rules establishing the EFP, 7 C.F.R. §§ 1475.50-.68. The rules establish eligibility criteria, § 1475.54, describe procedures for applying, § 1475.55, and structure program benefits, § 1475.56. In 1982 the Secretary promulgated a rule which expressly terminated EFP benefits for any and all applications received after April 8, 1982. 7 C.F.R. § 1475.53.

The Livestock Feed Program, or LFP, authorizes the Secretary to make available federally held commodities to affected farmers at advantageous prices. As with the EFP, the Secretary has promulgated extensive rules establishing the program, 7 C.F.R. §§ 1475.1-.17. Unlike the EFP, the Secretary has not attempted to terminate the program through rulemaking.

C. Proceedings Below.

Notwithstanding the severity of the 1983 drought the Secretary refused to provide program benefits to Iowa livestock farmers under the EFP or LFP. After informal efforts by the Governor and members of Iowa's congressional delegation to persuade the Secretary to provide benefits under the programs, the State of Iowa, as parens patriae of its citizens, filed an action under the Administrative Procedure Act in the United States District Court for the Southern District of Iowa which, inter alia, challenged the Secretary's failure to provide benefits to qualified farmers under the EFP and the LFP. The State challenged the validity of the EFP rule purporting to terminate the program with respect to applications received after April 8, 1982, as arbitrary and

capricious and contrary to the will of Congress, 7 C.F.R. § 1475.53. The State also challenged the failure of the Secretary to provide benefits under the rules establishing the LFP. After the State filed its parens patriae action, several individual farmers and their spouses sought and were granted intervention as additional plaintiffs.

After an evidentiary hearing on the plaintiffs' motion for a preliminary injunction, the District Court dismissed the action. Pet. App. 55-77. The Court first found that the State had no standing to litigate, either on its own behalf or as parens patriae for its citizens. Pet. App. 62, 68. The Court further concluded that it had no subject matter jurisdiction to review the Secretary's decisions not to implement the programs. Pet. App. 75. The Court

believed the broad delegation of authority left it with no "law to apply" in reviewing the Secretary's inaction. Pet. App. 71-72. While the Court recognized that the challenge to the Secretary's termination regulation presented "the judicial review issue in a distinct procedural context" [Order at 12 n.5. Pet. App. 77 n.5], it refused to consider the plaintiffs' APA attack on the rule. The Court did note, however, that were it to review the Secretary's decision not to provide assistance under the programs, "it would have no difficulty in finding that the emergency assistance programs actually implemented by the Secretary did not provide sufficient relief to livestock farmers in southeast Iowa who find themselves in precarious financial positions due, at least in part, to the

adverse weather conditions of the past three years." Order at 10. Pet. App. 74.

The State and plaintiff-intervenors filed a motion for altered judgment after the District Court entered its order dismissing the case. In their motion, the State and plaintiff-intervenors re-emphasized that with respect to the EFP, the action presented a straightforward APA challenge to the validity of a rule which purported to "terminate" the program. The State and plaintiff-intervenors further reiterated their view that with respect to the LFP, the Secretary had implemented the program through rulemaking. Once rules are promulgated establishing a program, the State and plaintiff-intervenors argued, the Secretary was legally required to follow them until he had

them amended or withdrawn through APA rulemaking procedures. The District Court denied the motion for altered judgment and the plaintiffs appealed.

On appeal, the Court of Appeals affirmed the District Court ruling that the State of Iowa lacked standing to litigate. State of Iowa ex rel. Miller v. Block, 771 F.2d 347, 352-55; Pet. App. 1-52. The Court further affirmed the District Court's dismissal of the action challenging the failure of the Secretary to provide qualified farmers with assistance under the EFP and LFP. In reaching this result, however, the Court of Appeals did not rely on the "no law to apply" exception to judicial review under the APA.[1] Instead, the

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[1] It should be noted that the Court found that the plaintiffs' challenge to the Secretary's failure to

Court of Appeals found the action concerning the EFP and LFP barred by the anti-injunction provisions of 15 U.S.C. § 714b(c). This provision states that the Commodity Credit Corporation "may sue and be sued, but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the corporation or its property." According to the Court of Appeals, because EFP and LFP benefits are "administered under the auspices of the CCC," the District Court lacked jurisdiction to consider the APA attack against the validity of the Secretary's

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n.1 continued

implement the Special Disaster Payments Program at 7 U.S.C. § 1444d(b)(2)(D) presented a straightforward case compelling judicial review of agency inaction. State of Iowa ex rel. Miller v. Block, 771 F.2d at 351; Pet. App. 14-15.

EFP termination rule and the APA attack on the Secretary for failing to abide by his own rules establishing the LFP program. See State ex rel. Miller v. Block, 771 F.2d at 348 n.1. Pet. App. 46-48 n.1.

E. Issues Presented To This Court.

While the proceedings below are complex, the issues presented to this Court in this petition are well focused. The first issue is whether district court jurisdiction to consider an APA action challenging the rule promulgated by the Secretary of Agriculture attempting to terminate the EFP program was ousted by the CCC anti-injunction provisions in 15 U.S.C. § 714b(c). The second issue is whether an APA action to force the Secretary to abide by his own rules is barred by the same anti-injunction provision. The final

question is whether a state has standing as parens patriae or on its own behalf to enforce the terms of congressionally established programs that benefit its citizens.

REASONS WHY THE WRIT SHOULD BE GRANTED

I. THE REFUSAL OF THE SECRETARY TO PROVIDE DISASTER ASSISTANCE TO LIVESTOCK FARMERS WHOSE OPERATIONS WERE DEVASTATED BY THE 1983 DROUGHT HAS HAD MAJOR IMPACT ON THE LIVESTOCK INDUSTRY IN THE MIDWEST.

The refusal of the Secretary to provide relief under the two programs at issue in this petition has had a major impact on livestock farming in the Midwest. The impact of the drought is illustrated by the evidence presented to the district court hearing on the plaintiffs' motion for a preliminary injunction.

The testimony of individual farmers was especially powerful. Hope Mendenhall of Garden Grove, Iowa, testified that corn yield on her family's farm in 1983 averaged seven bushels per acre in contrast to 125 bushels per acre in a normal year. Tr. 62. In addition to affecting corn yields, the drought also had a "devastating" effect on hay and pasture on the farm, a potential alternative source of livestock nutrition. Tr. 64. Without any meaningful assistance from disaster programs, the Mendenhalls were forced to prematurely reduce their cattle herd. Tr. 81. They were forced to purchase an additional $100,000 of feed to replace the feed grain that they normally would have produced on their own farm were it not for the drought. Tr. 85.

Similar testimony was offered by Henry Richardson of Lineville, Iowa.

Richardson told the District Court that because of the reduced yields on his farm (less than 5 bushels per acre) and the damage to pasture land caused by the drought, he suffered dairy production losses and experienced an increased incidence of disease in his dairy herd. Tr. 126. As a result of the drought, Richardson testified that he had insufficient feed to sustain his dairy cows and sheep. Consequently, he was forced to sell his starving young calves and lambs at disadvantageous prices. Tr. 134-136.

While both the Mendenhall and Richardson operations are financially stressed, testimony at the District Court hearing indicated that there was still hope for their economic survival. Agricultural banker Leslie Miller, after reviewing the financial posture of the

Mendenhall and Richardson operations, testified that it was possible for them to remain in farming with timely assistance. Tr. 208-209. She noted that federal agricultural loans are inadequate and that "cash injections" such as that available to eligible farmers under the EFP are essential to their survival. Tr. 226.

Miller further testified that it would take almost five years for cow-calf operations in southern Iowa to show any significant profits after the 1983 drought. Tr. 186. Agricultural economist Daniel Otto buttressed Miller's testimony, observing that an increasing volume of farm bankruptcies after the conclusion of the 1984 crop year could be expected as the effects of the drought rippled through successive years of livestock operations. Tr. 234.

The import of the evidence is clear: timely assistance under the programs which the Secretary has refused to implement would provide many livestock farmers with the resources necessary to stay on the farm. Conversely, failure to render timely assistance will speed up the process of foreclosure and bankruptcy of farmers unable to recover from the 1983 disaster.

This case is thus not simply important to the particular parties before the Court, Magnum Import Co. v. Coty, 262 U.S. 159, 163 (1923), but to a substantial portion of the public. Because of the importance of the issues raised to the livestock industry in the Midwest, this Court should grant the petition for certiorari.

II. THE COURT OF APPEALS' OPINION INSULATES IMPORTANT RULEMAKING AND AGENCY ACTION FROM JUDICIAL REVIEW CONTRARY TO ESTABLISHED PRINCIPLES OF ADMINISTRATIVE LAW.

The thrust of the Court of Appeals' opinion is that because a United States Department of Agriculture program is administered by the Commodity Credit Corporation, no attack under the Administrative Procedure Act may be launched to challenge program rules promulgated by the Secretary or to force the Secretary to comply with rules already in place. This approach runs afoul of the established principles of administrative law articulated by this Court in Barlow v. Collins, 397 U.S. 159, 167 (1970) (validity of amended regulation not a question committed to agency discretion by law); Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 410 (1971)

(strong presumption of judicial review of agency action); and Motor Vehicle Mfr. Ass'n. of the United States v. State Farm Mutual Ins. Co., 463 U.S. 29, 41-42 (1983) (agency action reversing previous policy subject to heightened judicial review).

The refusal of the Court of Appeals to allow plaintiffs to challenge the rule purporting to terminate the EFP program was particularly unsupportable. The agency's own rule, 7 C.F.R. § 1475.53, states:

> Benefits under the program shall be available to any owner of livestock which are maintained in the United States . . . who: (a) has suffered during the crop year a substantial loss of livestock feed normally produced on land owned (or operated under a bona fide lease) by the livestock owner, and (b) has filed an application for assistance under the Emergency Feed Program no later than April 8, 1982. . . .

(emphasis supplied).

The effect of this rule, which arbitrarily imposed an April 8, 1982, cutoff for applications for EFP benefits, was to terminate the program altogether. As announced by the Secretary in the notice accompanying the rule in the Federal Register, "the effect of this interim rule is to terminate this discretionary program in order to reduce administrative costs (emphasis supplied)." 47 Fed. Reg. 9,981 (March 9, 1982).

The plaintiffs maintained that the purported termination rule was contrary to the intent of Congress in that when it enacted 7 U.S.C. 2267, the Congress expected the Secretary to use his discretion to create some kind of EFP program, not abolish it altogether by administrative fiat. In addition, the plaintiffs sought to attack the

termination rule through an Overton Park-type analysis, claiming that the Secretary failed to consider important relevant factors when it promulgated the rule. The Court of Appeals fundamentally erred when it tossed aside these challenges to the Secretary's action simply because the programs are carried out through the Commodity Credit Corporation.

The only other case considering the question of whether the anti-injunction provisions of 15 U.S.C. § 714b(c) apply to the Secretary's rulemaking proceedings comes to a result consistent with Barlow and dramatically opposed to the Court of Appeals in this case. In Mitchell v. Block, 551 F.Supp. 1011 (W.D.Va. 1982), the Court considered whether the anti-injunction provision prevented an action seeking to enjoin

the Secretary from refusing to grade and provide price support for barley tobacco. The defendants asserted that because price support is offered through the Commodity Credit Corporation, the action was barred by 15 U.S.C. § 714b(c).

The District Court rejected the claim, noting the action was against the Secretary of Agriculture. The court noted that there is no language in 15 U.S.C. § 714b(c) "which would estop this Court from enjoining the Secretary from doing an arbitrary and capricious act." Mitchell v. Block, 551 F.Supp. at 1015. The mere fact that the farmers would be entitled to assistance under the EFP and LFP if the Secretary were restrained from unlawful acts does not clothe the Secretary with the corporation's cloak

of immunity. Mitchell v. Block, 551 F.Supp. at 1016.

The approach in Mitchell is sound. If the law were as the Court of Appeals held in the instant case, district courts would be deprived of jurisdiction to consider APA challenges to a host of agriculture programs established by the Secretary of Agriculture but administered or carried out through the Commodity Credit Corporation. 7 U.S.C. § 1444(g)(15) (loan rates, target prices, disaster payments, acreage reduction, and land diversion programs for cotton); 7 U.S.C. § 1444d(h) (loan rates and target prices for feed grains); 7 U.S.C. § 1445b-1(h) (loan and target price program for wheat); 7 U.S.C. § 1445b-2(e) (deficiency payments program for wheat, feed grains, upland cotton, and rice producers). Because the approach of the Court of Appeals is

so fundamentally wrong and sweeping in its potential application, this Court should grant this petition for writ of certiorari.

III. THE QUESTION OF WHETHER A STATE HAS STANDING TO ENFORCE CONGRESSIONALLY ESTABLISHED POLICY IS AN IMPORTANT QUESTION THAT HAS DIVIDED THE COURTS OF APPEAL.

The State of Iowa alleged that the well-being of all Iowa citizens is dependent upon the economic viability of its farmers and livestock producers. Complaint, ¶ 15. The State of Iowa further alleged that the failure of the Secretary to assist livestock farmers would impose fiscal burdens on the State because it administers unemployment compensation and other programs for displaced workers and failed businesses affected by the drought. Amended Complaint, ¶ 17.

The Court of Appeals dismissed the State as a party, deciding first that the State had failed to establish sufficient injury in fact to meet the requirements of Article III of the United States Constitution. See State of Iowa ex rel. Miller v. Block, 771 F.2d at 354; Pet. App. 26-27. The Court of Appeals further held that the State lacked standing to litigate as parens patriae on behalf of its citizens. Block, 771 F.2d 354-355; Pet. App. 29-30.

The State believes the Court of Appeals erred in giving short shrift to its allegations of fiscal harm. As a provider of a wide array of public services, the State has a vital interest in maintaining revenues and controlling expenditures. Several lower courts have recognized that similar fiscal interests are sufficient to meet Article III

standing requirements. Carey v. Klutznick, 637 F.2d 834, 838 (2nd Cir. 1980); Alabama ex rel. Baxley v. Tennessee Valley Authority, 467 F.Supp 791, 794-5 (N.D. Ala. 1979), rev'd on other grounds sub. nom. Alabama ex rel. Graddick v. Tennessee Valley Authority, 636 F.2d 1061 (5th Cir.), cert. denied, 454 U.S. 837 (1981); City of New York v. Heckler, 578 F.Supp. 1109, 1119-22 (E.D.N.Y.), aff'd on other grounds, 742 F.2d 729 (2d Cir. 1984), partial stay granted pending disposition, ___ U.S. ___, 105 S.Ct. 3552, cert. granted, ___ U.S. ___, 106 S.Ct. 57 (1985).

In addition, the question of whether a state may assert parens patrae standing to seek judicial review of federal agency action presents a question that has divided the Courts of Appeal. In this case, the Court of

Appeals for the Eighth Circuit rejected parens patriae standing, citing dicta in a footnote in Alfred L. Snapp & Son v. Puerto Rico, 458 U.S. 592, 610 n.16 (1982), and Commonwealth of Pennsylvania v. Kleppe, 533 F.2d 668, 677-78 (D.C. Cir.), cert. denied, 429 U.S. 977 (1976).

The Court of Appeals failed to recognize the posture of this case. The State of Iowa does not seek to enjoin or cut down a federal statute on constitutional grounds as was the case in Massachusetts v. Mellon, 262 U.S. 447 (1923). Instead, the State is seeking to vindicate the congressional will by preventing the Secretary from engaging in actions contrary to federal law. The parens patriae doctrine is being used as a sword to insure that an executive official complies with federal policy, not as a shield to protect a state from

the political output of the federal system.

This critical distinction has been recognized by this Court. See Georgia v. Pennsylvania Railroad Co., 324 U.S. 439, 446-47 (1945) (state seeking to enforce federal law distinguished from Mellon). In conflict with the approach of the Court of Appeals in this case, the Second, Fifth, and Ninth Circuits have held that the Mellon doctrine does not preclude suits by state authorities seeking to compel compliance with applicable federal law. See Carey v. Klutznick, 637 F.2d at 838 (census "undercount" of New York residence); Washington Utilities and Transportation Commission v. Federal Communications Commission, 513 F.2d 1142, 1153 (9th Cir.), cert. denied, 423 U.S. 836 (1975) (state agency has parens patriae

standing to challenge FCC order); Florida v. Weinberger, 492 F.2d 488, 493-494 (5th Cir. 1974) (reversing dismissal of state challenge to federal regulation).

Nothing in Alfred L. Snapp & Son v. Puerto Rico, 458 U.S. 592 (1982) defeats state parens patriae standing in this case. The only reference in Snapp to an action brought by a state against the federal government amounted to pure dicta in a footnote. In fact, Snapp upheld the territory's assertion of parens patriae standing in that suit against private defendants. The brief footnote distinguishing parens patriae suits against the federal government is clearly dicta. Further, it does not reflect the critical distinction between actions challenging congressional acts and those challenging an agency's

failure to implement the will of Congress. The rule of Massachusetts v. Mellon, 262 U.S. 447 (1923), should not apply where, as here, a state challenges a federal agency's refusal to comply with federal law. This question was not at issue in Snapp, and the Eighth Circuit erred in relying on a footnote to dispose of the state's action.

CONCLUSION

For all the above reasons, the State of Iowa and individual farmers respectfully request that their petition for writ of certiorari be granted.

Respectfully submitted,

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